

### DETAILED ACTION

1. The amendments to the claims, filed on July 20, 2010 are acknowledged and have been entered. Currently, claims 19, 20, 23, 28 and 29 are pending. Applicants' submission of the terminal disclaimers on September 20, 2010 is noted. The terminal disclaimers have been reviewed and are accepted, and are therefore sufficient to overcome the double patenting rejections of record.

### ELECTIONS/RESTRICTIONS

2. The restriction requirement dated December 18, 2008 is **withdrawn**. Claim 29 is rejoined in view of the allowability of claim 19. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

### EXAMINER'S AMENDMENT

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

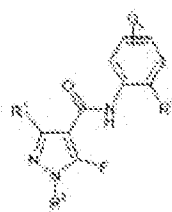
Authorization for this examiner's amendment was given in a telephone conversation with **Richard Henderson on September 20, 2010.**

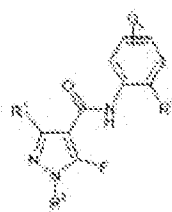
The claims recited below have been amended as follows.

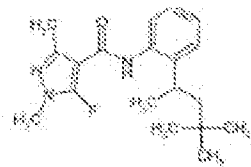
Claim 29: In line 1 of the claim, delete the phrase "unwanted microorganisms" and replace with ---phytopathogenic fungi---.

#### REASONS FOR ALLOWANCE

4. The following is an examiner's statement of reasons for allowance: The instantly claimed compounds are novel and non-obvious over the prior art because of the following structural limitation: **the particular substituents required on the pyrazole ring and the tertiary nature of the terminal group on the alkyl chain.** The closest prior art is Elbe et al., WO 03/010149. This reference does not encompass the scope of the instant application, which includes the novelty identified above.



5. The '149 publication teaches the compound . The particular compound in the '149 publication which is closest to the instantly claimed compounds is Example 1:



/ This compound differs from the compound in the instant claims in at least two aspects. Firstly, the pyrazole ring in the prior art is substituted by fluorine, which is not

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included in the scope of pyrazole substituents in the instant claims. Secondly, there is a methyl substitution on the first carbon in the alkyl chain, whereas the instant compounds require hydrogen at the same position. Applicant's declaration submitted on July 20, 2010 shows that the instant compounds, with a chloro-substituted pyrazole and an unsubstituted alpha carbon, are unexpectedly more efficacious in their fungicidal activity compared with the prior art compounds. Therefore, the instantly claimed compounds are not obvious over those of the prior art.

6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

7. Claims 19, 20, 23, 28 and 29 (renumbered 1-5) are allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia L. Otton whose telephone number is (571)270-7683. The examiner can normally be reached on Monday through Thursday, 8:00 – 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alicia L. Otton/  
Examiner, Art Unit 1626

/Golam M. M. Shameem/  
Primary Examiner, Art Unit 1626